

UNITED STATES TAX COURT
WASHINGTON, DC 20217

GEORGE W. & ROSALIE F. LOVELL,)
)
 Petitioners,)
)
 v.) Docket No. 10040-12 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

On February 14, 2013, the Court issued its “Order and Decision” in this “collection due process” (CDP”) case, granting summary judgment in favor of respondent, the IRS. On March 13, 2013, petitioners George W. and Rosalie F. Lovell filed a timely motion to vacate the decision. Their motion will be denied.

In section 6330(c)(2)(B), Congress decreed that in a CDP hearing a taxpayer may challenge the underlying liability at issue only “if the person did not receive any statutory notice of deficiency for such tax liability”. The Lovells, however, did receive a statutory notice of deficiency for 2000, 2006, and 2007 but did not challenge that determination in a Tax Court deficiency suit. Their motion to vacate admits that “[t]he failure to act properly on the 90 day stat notice was an error we made and a missed opportunity”. We sympathize with their regret; but under the statute Congress enacted, we cannot entertain the challenge they now wish to make as to their underlying liability.

Our decision upholding the IRS’s collection determination is without any prejudice to the Lovells’ pursuing other remedies a taxpayer may have before the IRS, outside of the court-reviewable CDP process--including, if applicable, a request for audit reconsideration, a request for abatement on Form 843, an offer-in-compromise based on doubt as to liability, or a claim for refund (court-reviewable

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in a tax refund suit). But in this suit brought under section 6330(d), we do not have jurisdiction to give the Lovells the relief they seek. It is therefore

ORDERED that petitioners' motion to vacate is denied.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
March 20, 2013